

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIAN E. SAYLOR,

Plaintiff,

v.

KATHLEEN ALLISON, et al.,

Defendants.

Case No. 1:21-cv-01062-EPG (PC)

ORDER RE: NOTICE OF VOLUNTARY
DISMISSAL

(ECF No. 19)

ORDER DENYING MOTION TO APPOINT
COUNSEL AS MOOT

(ECF No. 17)

Plaintiff Brian E. Saylor (“Plaintiff”) is a state inmate proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff filed the complaint commencing this action on July 7, 2021. (ECF No. 1.) On August 13, 2021, the Court screened Plaintiff’s complaint and found that it failed to state any cognizable claims. (ECF No. 12.) Plaintiff filed his First Amended Complaint on August 20, 2021. (ECF No. 13.) On September 24, 2021, the Court issued findings and recommendations recommending that this action be dismissed. (ECF No. 15.) Plaintiff was provided an opportunity to file objections within twenty-one days from the date of service of the findings and recommendations. (*Id.*)

On October 7, 2021, Plaintiff filed a motion to appoint counsel. (ECF No. 17.) On October 12, 2021, Plaintiff filed a response to the Court’s findings and recommendations. (ECF No. 19.) In his response to the findings and recommendations, Plaintiff states:

Good morning, your Honor. Plaintiff, after consideration of the Court's opinion, must responsibly yield to the Court's opinion. The issue of torture appears yet premature, and importantly Plaintiff understands the legal importance of the theory of respondeat superior within the context of prisoner conduct.

Lastly, Plaintiff requests to withdraw this action from the United States District Court's review before dismissing any complaint after another ruling by this Court Your Honor.

(Id.)

The Court construes Plaintiff's response to the findings and recommendations as a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Therefore, this action has been terminated and is dismissed. *See* Fed. R. Civ. P. 41(a)(1)(A); *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997).¹ In light of the voluntary dismissal, the Court will deny the motion to appoint counsel as moot.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's response to the Court's findings and recommendations (ECF No. 19) is construed as a notice of voluntary dismissal pursuant to Federal Rule 41(a)(1)(A)(i);
2. Plaintiff's motion to appoint counsel (ECF No. 17) is denied as moot; and
3. The Clerk of Court is directed to administratively terminate the findings and recommendations entered on September 24, 2021 (ECF No. 15) and to close this case.

IT IS SO ORDERED.

Dated: October 19, 2021

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE

¹ The Court notes that the dismissal is automatically without prejudice, unless Plaintiff has previously dismissed a federal or state court action that is based on, or includes, the same claims at issue in the present case. *See* Fed. R. Civ. P. 41(a)(1)(B) ("Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits."). Thus, although Plaintiff's case is voluntarily dismissed, it is unclear, and the Court does not decide, whether the voluntary dismissal is with or without prejudice.